

FACTUAL HISTORY

On May 19, 2004 appellant, then a 49-year-old x-ray technician, filed an occupational disease claim alleging that she sustained back and lower extremity conditions due to lifting and transferring patients from a cart or wheelchair to a diagnostic testing table.

Appellant submitted the findings of a May 2004 magnetic resonance imaging scan testing which showed that she had a disc protrusion at L5-S1. She also submitted form reports dated May 24 and June 8, 2004 in which Dr. Marco Marsella, an attending Board-certified neurosurgeon, recommended work restrictions.

By decision dated August 19, 2004, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an employment-related back or lower extremity condition.

Appellant submitted a September 21, 2004 report which detailed a steroid injection that she received in her lumbar spine. She also submitted a September 8, 2004 report in which Dr. Douglas J. Long, an attending Board-certified neurosurgeon, discussed her back and lower extremity condition.

By decision dated February 9, 2005, the Office affirmed its August 19, 2004 decision.

Appellant submitted a February 24, 2005 report in which Dr. Long stated that she presented on September 8, 2004 with complaints of a long-standing history of low back pain, including increased symptoms in March 2004, which she attributed to lifting and transferring patients at work. Dr. Long diagnosed degenerative disc disease at L4-5, disc protrusion at L5-S1 and right synovial cyst at L5-S1 and stated, "I believe [appellant's] low back pain continues to be aggravated due to the daily moving of patients." Appellant also submitted several documents dated September 20, 2004 including a medical procedure consent form and two brief completed form reports entitled "outpatient history and examination" and "therapeutic pain block record."

By decision dated June 3, 2005, the Office reviewed appellant's claim on the merits and affirmed its prior decisions.

By letter dated July 28, 2005, appellant requested reconsideration of her occupational disease claim. She again argued that she sustained back and lower extremity conditions due to lifting and transferring patients onto diagnostic testing tables.

In support of her request, appellant submitted a June 28, 2005 report in which Dr. Long stated, "It is our opinion that [appellant] continues to suffer low back pain as a result of her employment at the employing establishment. Please find enclosed my original opinion, dated February 24, 2005."²

Appellant resubmitted copies of the September 21, 2004 report which detailed a steroid injection she received in her lumbar spine, the September 8, 2004 report of Dr. Long and the

² No copy of the February 24, 2005 report decision was enclosed.

documents dated September 20, 2004 including a medical procedure consent form and two brief completed form reports. She also submitted copies of prior Office decisions regarding her claim and a July 27, 2005 letter to a congressional representative in which appellant argued that she sustained back and lower extremity conditions due to lifting and transferring patients at work.

By decision dated August 22, 2005, the Office denied appellant's request for further review of the merits of her claim.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ the Office regulation provides that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁵ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁶

ANALYSIS

Appellant alleged that she sustained back and lower extremity conditions due to lifting and transferring patients from a cart or wheelchair to a diagnostic testing table. The Office denied her claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an employment-related back or lower extremity condition.

In connection with her timely July 28, 2005 reconsideration request, appellant argued that she sustained back and lower extremity conditions due to lifting and transferring patients onto diagnostic testing tables. The submission of this argument would not require the Office to conduct further merit review of appellant's claim, because the Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.⁷ Appellant previously submitted similar arguments to the Office and it considered and rejected these arguments.

³ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ 20 C.F.R. § 10.607(a).

⁶ 20 C.F.R. § 10.608(b).

⁷ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

Appellant also submitted a June 28, 2005 report in which Dr. Long, an attending Board-certified neurosurgeon, stated “It is our opinion that [appellant] continues to suffer low back pain as a result of her employment at the [employing establishment].” However, this report is similar to the February 24, 2005 report of Dr. Long which was previously submitted and considered by the Office. In fact, the June 28, 2005 report of Dr. Long is less detailed than his February 24, 2005 report.

Appellant’s copies of the September 21, 2004 report which detailed a steroid injection she received in her lumbar spine, the September 8, 2004 report of Dr. Long and the documents dated September 20, 2004, including a medical procedure consent form and two brief completed form reports, but these documents had already been submitted and considered by the Office. She submitted a July 27, 2005 letter to a congressional representative but this letter contained arguments which had already been considered and rejected.

Appellant has not established that the Office improperly denied her request for further review of the merits of its June 3, 2005 decision under section 8128(a) of the Act, because the evidence and argument she submitted did not show that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by the Office or constituted relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that the Office properly denied appellant’s request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 22, 2005 decision is affirmed.

Issued: October 18, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board